

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LEE A. BROWN,

Petitioner,

v.

Case No. 08-C-681

BYRAN BARTOW,

Respondent.

ORDER

Lee A. Brown, who is currently incarcerated at the Wisconsin Resource Center, has filed a civil action against that institution's warden, Byran Bartow. In his complaint Brown challenges the state's continued custody of him, under Chapter 980, following his mandatory release date. From the face of Brown's filings, it is not clear whether he is seeking damages or release from custody, or both. To the extent he seeks damages for unlawful incarceration, the case must be dismissed under *Heck v. Humphrey* because Brown has not established in prior proceedings that his custody was, in fact, unlawful. 512 U.S. 477 (1994). A monetary judgment in his favor would necessarily imply the invalidity of Brown's incarceration, and that is something a civil rights plaintiff must show *before* coming to federal court. *McCann v. Neilsen*, 466 F.3d 619 (7th Cir. 2006).

To the extent Brown is seeking habeas-style relief (release from custody), there is no indication within his filings (which consist of a hand-written page as well as part of the court's civil rights form) that he has exhausted his state court remedies. This is a requirement of the federal habeas statute, 28 U.S.C. § 2254(b)(1)(A). Before bringing a habeas case to federal court, Brown

must attempt to challenge his custody in the state courts, and it does not appear he has done so.¹

Accordingly, the complaint will be dismissed. The filing fee is waived.

SO ORDERED this 11th day of August, 2008.

s/ William C. Griesbach _____
William C. Griesbach
United States District Judge

¹Wisconsin courts' public records indicate that a Lee A. Brown at the WRC has recently filed a petition for habeas corpus in Milwaukee County Circuit Court.